

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

FILED
JUN 10 2019
Clerk, U.S. Courts
District Of Montana
Missoula Division

RUSSELL SCOTT AVERY,

Petitioner,

vs.

JAMES SALMONSEN,

Respondent.

CV 18-69-M-DLC-JCL

ORDER

United States Magistrate Judge Jeremiah C. Lynch entered his Findings and Recommendations on April 5, 2019, recommending that this matter be dismissed for lack of jurisdiction. (Doc. 13 at 4.) Petitioner did not object to the Findings and Recommendations and so has waived the right to de novo review thereof. 28 U.S.C. § 636(b)(1)(C). Absent objection, this Court reviews findings and recommendations for clear error. *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc); *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” *United States v. Syrax*, 235 F.3d 422, 427 (9th Cir. 2000) (citations omitted). Reviewing for clear error, the Court notes only that Judge Lynch discusses granting a certificate of appealability yet recommends denial. The Court treats the denial recommendation as a clerical error based on the specific


reasons Judge Lynch provided for granting the certificate and does not find any other instance of clear error. Accordingly,

IT IS ORDERED that Judge Lynch's Findings and Recommendations (Doc. 13) are ADOPTED IN PART and this matter is DISMISSED for lack of jurisdiction.

IT IS FURTHER ORDERED that the Clerk of Court is directed to enter a judgment of dismissal by separate document.

IT IS FURTHER ORDERED that a certificate of appealability is GRANTED.

DATED this 10th day of June, 2019.



Dana L. Christensen, Chief Judge
United States District Court